

MORAN LAW GROUP, INC.  
CATHLEEN COOPER MORAN, I.D. #83758  
RENÉE C. MENDOZA, I.D. #139939  
1674 N. Shoreline Blvd., Suite 140  
Mountain View, CA 94043-1375  
Tel.: (650) 694-4700  
Fax: (650) 694-4818  
E-mail: Cathy@moranlaw.net

Attorney for Debtors

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5

|                               |   |                         |
|-------------------------------|---|-------------------------|
| In Re:                        | ) | Chapter 7               |
|                               | ) |                         |
| ANDREW J. KETTLE aka ANDY     | ) | Bankruptcy No. 09-52516 |
| KETTLE; AND HEATHER P. KETTLE | ) |                         |
| aka HEATHER P. GALBRAITH,     | ) | Date: April 1, 2010     |
|                               | ) | Time: 1 p.m.            |
|                               | ) | Place: 3070             |
|                               | ) |                         |
| Debtors.                      | ) |                         |
|                               | ) | HON. MARILYN MORGAN     |

**MOTION TO COMPEL ABANDONMENT**

The debtors, Andrew and Heather Kettle move the court for an order compelling the abandonment of their home by the trustee.

**FACTS**

1. This case was commenced on April 5, 2009. A 341 meeting was held on May 26, 2009.
2. The debtors claimed a homestead exemption of \$75,000 in their home at 6025 Meridian Avenue, San Jose (the "Home"). The schedules valued the home at \$620,000.
3. The Home is subject to liens as follows:
  - a. Property taxes 4,104
  - b. First deed of trust-Wells Fargo 136,089

|   |    |                                     |                |
|---|----|-------------------------------------|----------------|
| 1 | c. | Home equity line- National City     | 195,182        |
| 2 | d. | Kawasaki - Abstract of Judgment     | 109,000        |
| 3 | e. | Attorney Recovery Systems -Abstract | 67,462         |
| 4 | f. | Wells Fargo- Abstract               | 110,000        |
| 5 | g. | LC Freed- Abstract                  | 43,807         |
| 6 |    | <b>TOTAL</b>                        | <b>665,644</b> |

- 7 4. Post petition, Debtors have made regular payments on the first and second  
8 mortgages and those obligations are current. In addition, the Debtors made the  
9 property tax payments that have come since the case was commenced.
- 10 5. The involuntary liens secured by the Home have not received payment post petition  
11 and continue to accrue interest at the California judgment rate of 10%. The  
12 involuntary liens total \$330,269. A year's worth of interest on those liens adds  
13 \$33,027 to the debts secured by the Home.
- 14 6. This court authorized employment of a real estate broker to handle the sale of the  
15 Home on September 9, 2009. The Home was listed on the multiple listing service  
16 on or about September 28, 2009 and has been continuously on the market since that  
17 time.
- 18 7. The original listing price was \$699,950; on February 25, 2010, after 150 days on  
19 the market, the price was reduced to \$ 674,950. A sale at either of these prices  
20 would be insufficient to pay the secured debts and the Debtors' homestead, much  
21 less costs of sale, costs of administration, or unsecured creditors.
- 22 8. The terms of the court's order directing the Debtors to cooperate in the sale of their  
23 Home require 24 hour notice to them of a showing of the house to prospective  
24 buyers. No such notice has been given to Debtors since the first of this year.  
25 Debtors therefore believe that no would-be buyers have inspected the home in the  
26 two and a half months of 2010, even at the reduced price.

## 27 ARGUMENT

28 **The property is of inconsequential value and benefit to the bankruptcy estate.**

1 Bankruptcy Code Section 554 (b) provides:

2 “On request of a party in interest and after notice and a hearing, the court may order the  
3 trustee to abandon any property of the estate that is burdensome to the estate or that is of  
4 inconsequential value and benefit to the estate.”

5 In the present case, the Debtor’s Home offers no value or benefit to the estate.  
6 The secured claims and post petition interest on the involuntary claims exceed the current  
7 (reduced) listing price of the home. The debtors are entitled to payment of a homestead of  
8 \$75,000 from any sale of the property. It has been generously exposed to the market and  
9 no sale has resulted. No sale can reasonably be expected that would pay the costs of sale,  
10 the secured claims and the debtors’ homestead.

11 In *Ayers*, 137 B.R. 397, 401 (Bankr. Mt. 1992), the court put “ the matter of  
12 abandonment under § 554 in proper perspective in a Chapter 7 liquidation.

13 Numerous courts have recognized that where the estate has no equity in a  
14 property, and the estate is to be liquidated, abandonment will virtually always  
15 be appropriate, because no unsecured creditor could benefit from its  
16 administration. *In re Cunningham*, 48 Bankr. 509 (Bankr. M.D. Tenn. 1985);  
17 *Matter of Karl A. Neise, Inc.*, 31 Bankr. 409 (Bankr. S.D. Fla. 1983); *In re*  
18 *Anspach*, 13 Bankr. 208 (Bankr. E.D. Pa. 1981); *In re Brannan*, 5 Bankr. 505  
19 (D. V.I. 1980). *See also In re Air Vermont, Inc.*, 41 Bankr. 486 (Bankr. D.Vt.  
20 1984). *Id.* at 610.

21 There is no equity in the Home and therefore no benefit to unsecured creditors from  
22 attempts to sell it.

23 **Trustees should not administer property where no benefit to unsecured creditors will**  
24 **result.** The Chapter 7 Trustee’s Handbook, Chapter 6 A provides

25 ....

26 A chapter 7 case should be administered to maximize and expedite  
27 dividends to creditors and facilitate a fresh start for the debtors entitled to a  
28 discharge. A trustee should not administer an estate or an asset in an estate  
where the proceeds of liquidation will primarily benefit the trustee or the  
professionals, or unduly delay the resolution of the case. Chapter 7 trustees  
must be guided by this fundamental principle when acting as trustee.  
Accordingly, the trustee must consider whether sufficient funds will be  
generated to make a meaningful distribution to creditors before  
administering a case as an asset case. <http://tinyurl.com/yzzq3na>

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**CONCLUSION**

The Home has been adequately exposed to the market to assure all parties that it is not sufficiently valuable for a sale of the property to produce net proceeds, after the costs of sale, to pay the secured creditors and the Debtors' homestead. The trustee's duties include a duty to facilitate a fresh start for debtors entitled to a discharge. While these debtors have received their discharge, they still encounter uncertainty because of the fruitless efforts of the trustee to make something out of nothing with respect to the Home. The property is of no value or benefit to the estate and the trustee should be ordered to abandon the property.

MORAN LAW GROUP

Date: \_\_\_\_\_  
CATHLEEN COOPER MORAN  
Attorney for Andrew and Heather Kettle